

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RASHAAN GOLDEN §
v. § CIVIL ACTION NO. 6:13cv896
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Rashaan Golden, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 challenging the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings and records, the Magistrate Judge issued a Report on April 14, 2013, recommending that the petition be dismissed because Golden challenged the handling of his state habeas corpus petition, a matter which is not cognizable in federal habeas corpus. *Duff-Smith v. Collins*, 973 F.2d 1175, 1192 (5th Cir. 1992). The Magistrate Judge also stated that to the extent Golden challenged his conviction itself, his petition lacked merit because he has previously sought habeas corpus review in federal court and has not obtained permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3). Golden did not file objections to the Report of the Magistrate Judge; instead, he filed a motion for voluntary dismissal of his petition.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Golden's request for voluntary dismissal should

be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977); *Thomas v. Phillips*, 83 Fed.Appx. 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Petitioner's motion to dismiss his habeas corpus petition (Docket No. 13) is hereby **GRANTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** on the motion of the Petitioner. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 2nd day of May, 2014.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial 'L' on the left and a more formal 'DAVIS' on the right.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**